IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

3115 DURRELL APARTMENTS,	:	APPEAL NO.	C-260114
		TRIAL NOS.	A-2300960
Plaintiff-Appellee,	:		A-2300961
vs.	:		
CLYDE AUSTIN,	:		
		JUDGMENT ENTRY	
Defendant-Appellant.	:		

KINSLEY, Presiding Judge.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant-appellant Clyde Austin appeals the judgment of the Hamilton County Court of Common Pleas granting a directed verdict in favor of plaintiff-appellee 3115 Durrell Apartments ("Durrell") on Austin's counterclaims for negligence, gross negligence, harassment/invasion of privacy, defamation/slander, negligent and intentional infliction of emotional distress, fraud, and abuse of process.

Austin raises three assignments of error. In the first, Austin argues that the trial court improperly reflected the directed verdict in a nunc pro tunc order. A trial court may use a nunc pro tunc order to correct a clerical mistake or omission in its original entry where the mistake or omission is mechanical in nature and apparent on the record. *State v. Perkins*, 2010-Ohio-5058, ¶ 15 (3d Dist.). A trial court may therefore issue a nunc pro tunc entry to reflect what it actually decided. *Miller v. Watkins & State Auto. Mut. Ins. Co.*, 2004-Ohio-3132, ¶ 7 (1st Dist.). That is precisely what the trial court did here. The trial court's nunc pro tunc order reflected that the

trial court issued a directed verdict in Durrell's favor on Austin's counterclaims at the conclusion of the jury trial. This was a proper use of a nunc pro tunc entry.

Notably, Austin does not dispute that the trial court actually issued a directed verdict on the record, and the appellate record does not include a trial transcript. In the absence of such a transcript, we "must presume the regularity of the proceeding." (Cleaned up.) *Ndiathe v. Ndiath*, 2025-Ohio-4828, ¶ 13 (1st Dist.). This requires us to presume that the trial court's order reflects what actually occurred in court. Therefore, Austin's first assignment of error is overruled.

In his second assignment of error, Austin argues that the trial court erred by omitting part of the record. In doing so, he suggests that the trial court had the duty to ensure that the transcripts were a part of the record. But this is incorrect. Pursuant to App.R. 9(B)(1), "it is the obligation of the *appellant* to ensure that the proceedings the appellant considers necessary for inclusion in the record. . . . are transcribed in a form that meets the specifications of App.R. 9(B)(6)." (Emphasis added.)

Austin further asserts that the trial court erred in failing to conduct an evidentiary hearing on his counterclaims before it issued the nunc pro tunc order memorializing its directed verdict. However, Austin's counterclaims were tried to a jury, so he had an opportunity to be heard. We accordingly overrule Austin's second assignment of error.

In his third assignment of error, Austin argues that, despite the trial court's directed verdict and the jury's verdict in Durrell's favor on its eviction claim, there remain genuine issues of material fact necessary to resolve in the case. Our resolution of this assignment of error is barred by the law-of-the-case doctrine, as Austin previously appealed this matter in *3115 Durrell Apts. v. Austin*, 2026 Ohio App. LEXIS 448 (1st Dist. Feb. 6, 2026) ("*Durrell I*"). To the extent Austin challenges the jury's

verdict and the trial court's decisions on his pretrial motions, our resolution of his appeal is governed by the law-of-the-case doctrine. Pursuant to that doctrine, "legal questions resolved by a reviewing court in a prior appeal remain the law of that case for any subsequent proceedings at both the trial and appellate levels." (Cleaned up.) *Helton v. Fifth Third Bank*, 2022-Ohio-1023, ¶ 16 (1st Dist.). Because we addressed the jury's verdict and Austin's pretrial motions in *Durrell I*, the law-of-the-case doctrine governs Austin's identical claims here. We affirmed the trial court's judgment in *Durrell I* and do so again here.

To the extent Austin raises new challenges to the procedure below, those arguments are barred by the doctrine of claim preclusion. Claim preclusion makes an existing final judgment between the parties conclusive as to all claims that were or might have been litigated in the first action. *AJZ's Hauling, LLC v. Trunorth Warranty Programs of N. Am.*, 2023-Ohio-3097, ¶ 16. Austin could have raised any challenges pertaining to the jury trial in his first appeal. His failure to do so prevents litigating those challenges now. Therefore, Austin's third assignment of error is overruled, and we affirm the judgment of the trial court.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

BOCK and **NESTOR, JJ.,** concur.

To the clerk:
Enter upon the journal of the court on 10/9/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge